

SANDERS LAW GROUP

Craig B. Sanders, Esq.
100 Garden City Plaza, Suite 500
Garden City, NY 11530
Tel: (516) 203-7600
Email: csanders@sanderslaw.group
File No.: 124484
Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
BROOKLYN DIVISION**

Matthew McDermott,

Plaintiff,

v.

K-Radio LLC,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Matthew McDermott ("*Plaintiff*"), by and through its undersigned counsel, for its Complaint against defendant K-Radio LLC ("*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement and the violation of the DMCA for the removal of copyright management information.

2. Plaintiff herein creates photographic images and owns the rights to these images which Plaintiff licenses for various uses including online and print publications.

3. Defendant owns and operates a website known as www.am1660.com (the "*Website*").

4. Defendant, without permission or authorization from Plaintiff actively copied, stored, and/or displayed Plaintiff's Photograph on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

PARTIES

5. Plaintiff Matthew McDermott is an individual who is a citizen of the State of New York and maintains a principal place of business 23-38 33rd Street, Queens in New York City, New York.

6. Upon information and belief, Defendant K-Radio LLC, is a New York limited liability company with a principal place of business at 209-35 Northern Boulevard, Queens in New York City, New York and is liable and responsible to Plaintiff based on the facts herein alleged.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over K-Radio LLC because it maintains its principal place of business in New York.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because K-Radio LLC does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

10. Plaintiff is a professional photographer by trade who is the legal and rightful owners of photographs which Plaintiff licenses to online and print publications.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff owns protectable copyright interests.

14. Upon information and belief, K-Radio LLC is the registered owner of the Website and is responsible for its content.

1 15. Upon information and belief, K-Radio LLC is the operator of the Website and is
2 responsible for its content.

3 16. The Website is a popular and lucrative commercial enterprise.

4 17. The Website is monetized in that it contains paid advertisements and, upon
5 information and belief, Defendant profits from these activities.

6 18. On October 5, 2020, Plaintiff authored a photograph of New York City Police
7 officers speaking at a memorial service at St. Patrick's Cathedral in New York City (the
8 "*Photograph*"). A copy of the Photograph is attached hereto as Exhibit 1.

9 19. Plaintiff applied to the USCO to register the Photograph on or about November 21,
10 2020 under Application No. 1-9902734108.

11 20. The Photograph was registered by the USCO on November 21, 2020 under
12 Registration No. VA 2-228-109.

13 21. On November 1, 2021, Plaintiff first observed the Photograph on the Website in a
14 story dated October 5, 2020. A copy of the screengrab of the Website including the Photograph is
15 attached hereto as Exhibit 2.

16 22. The Photograph was displayed at URL:
17 https://www.am1660.com/kradio/board.php?bo_table=loca&wr_id=25349&sca=Local+News&st=wr_hit&sod=desc&sop=and&page=89.
18

19 23. The Photograph was stored at URL:
20 [https://www.am1660.com/data/editor/2010/thumb-](https://www.am1660.com/data/editor/2010/thumb-87165d29359d660f31c12de4348f77c2_1601931029_6739_800x461.jpg)
21 [87165d29359d660f31c12de4348f77c2_1601931029_6739_800x461.jpg](https://www.am1660.com/data/editor/2010/thumb-87165d29359d660f31c12de4348f77c2_1601931029_6739_800x461.jpg)
22

23 24. Without permission or authorization from Plaintiff, Defendant volitionally selected,
24 copied, stored and/or displayed Plaintiff's copyright protected Photograph as is set forth in Exhibit
25 "1" on the Website.

26 25. Upon information and belief, the Photograph was copied, stored and displayed
27 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter the
28 "*Infringement*").

1 26. The Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed
2 tangible medium of expression that was sufficiently permanent or stable to permit it to be
3 communicated for a period of more than a transitory duration and therefore constitutes a specific
4 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.* 508 F.3d 1146, 1160 (9th
5 Cir. 2007).

6 27. The Infringement is an exact copy of the entirety of Plaintiff’s original image that
7 was directly copied and stored by Defendant on the Website.

8 28. Upon information and belief, Defendant takes an active and pervasive role in the
9 content posted on its Website by, inter alia, directly employing reporters, authors and editors as its
10 agents who post content on Defendant’s Website under the alias designation “Kradio am1660”
11 (“*Employees*”).

12 29. Upon information and belief, at all material times the Employees were acting within
13 the course and scope of their employment when they posted the Infringement.

14 30. Upon information and belief, at all material times the Employees were acting within
15 the course and scope of their agency when they posted the Infringement.

16 31. Upon information and belief, the Photograph was willfully and volitionally posted
17 to the Website by Defendant.

18 32. Upon information and belief, Defendant is not registered with the United States
19 Copyright Office pursuant to 17 U.S.C. §512.

20 33. Upon information and belief, the Infringement was not posted at the direction of a
21 “user” as that term is defined in 17 U.S.C. §512(c).

22 34. Upon information and belief, Defendant engaged in the Infringement knowingly
23 and in violation of applicable United States Copyright Laws.

24 35. Upon information and belief, Defendant has the legal right and ability to control
25 and limit the infringing activities on its Website and exercised and/or had the right and ability to
26 exercise such right.

27 36. Upon information and belief, Defendant monitors the content on its Website.
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1 infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that
2 they used, published, communicated, posted, publicized, and otherwise held out to the public for
3 commercial benefit, the original and unique Photograph of the Plaintiff without Plaintiff's consent
4 or authority, by using it in the infringing article on the Website.

5 49. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled
6 to an award of actual damages and disgorgement of all of Defendant's profits attributable to the
7 infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at
8 Plaintiff's election, an award for statutory damages against Defendant for each infringement
9 pursuant to 17 U.S.C. § 504(c).

10 50. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in
11 its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs
12 pursuant to 17 U.S.C. § 505 from Defendant.

13 51. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled
14 to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

15 **SECOND COUNT**

16 ***(Falsification, Removal and Alteration of Copyright Management 17 Information 17 U.S.C. § 1202)***

18 52. Plaintiff repeats and incorporates, as though fully set forth herein, each and every
19 allegation contained in the preceding paragraphs, as though set forth in full herein.

20 53. Upon information and belief, Defendant knew that Plaintiff created and held rights
21 to the Photograph because, *inter alia*, the source of the Photograph that Defendant used to make
22 its infringing copy specifically attributed the Photograph to Plaintiff by watermark or photo credit.

23 54. Upon information and belief, in its article on the Website, Defendant copied the
24 Photograph from [https://nypost.com/2020/10/05/nypd-honors-46-members-who-died-of-covid-](https://nypost.com/2020/10/05/nypd-honors-46-members-who-died-of-covid-19/)
25 [19/](https://nypost.com/2020/10/05/nypd-honors-46-members-who-died-of-covid-19/) which contained a photograph credit beneath the Photograph stating "Matthew McDermott,"
26 the owner and author of the Photograph.

27 55. The photograph credit is copyright management information.
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1 56. A screenshot of the website of first publication including the Photograph is attached
2 hereto as Exhibit 3.

3 57. Upon information and belief, Defendant intentionally removed copyright
4 management information related to the Photograph with the intent to induce, enable, facilitate, or
5 conceal an infringement of Plaintiff's rights under the Copyright Act. Specifically, Defendant
6 purposefully failed to include the photo credit originally conveyed with the Photograph in order to
7 mislead the public into believing that Defendant either owned the Photograph or had legitimately
8 licensed it for use in the Infringement.

9 58. In addition, Defendant displayed the unauthorized copies of the Photograph
10 knowing the copyright management information had been removed.

11 59. Defendant's conduct violates 17 U.S.C. § 1202(a) and 1202(b).

12 60. Upon information and belief, Defendant's falsification, removal and/or alteration of
13 the aforementioned copyright management information was made without the knowledge or
14 consent of Plaintiff.

15 61. Upon information and belief, the falsification, alteration and/or removal of said
16 copyright management information was made by Defendant intentionally, knowingly and with the
17 intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the
18 Photograph. Defendant also knew, or should have known, that such falsification, alteration and/or
19 removal of said copyright management information would induce, enable, facilitate, or conceal
20 their infringement of Plaintiff's copyright in the Photograph.

21 62. Plaintiff has sustained significant injury and monetary damages as a result of
22 Defendant's wrongful acts as hereinabove alleged, and as a result of being involuntarily associated
23 with Defendant in an amount to be proven.

24 63. As a result of Defendants' violations of Title 17 of the U.S. Code, pursuant to 17
25 U.S.C. § 1203(c)(2), Plaintiff is entitled to an award of the actual damages suffered as a result of
26 the violation including any profits of the Defendant attributable to the violation or, alternatively,
27 Plaintiff may elect to recover from Defendant statutory damages pursuant to 17 U.S.C. §
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1203(c)(3) for each violation of 17 U.S.C. § 1202.

64. As a result of the Defendants' violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C. § 1203(b)(4) and (5) from Defendant.

JURY DEMAND

65. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights to the Photograph in violation of 17 U.S.C. § 501 et seq. and award damages and monetary relief as follows:

- a. finding that Defendant infringed upon Plaintiff's copyright interest in the Photograph by copying and displaying without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an award of actual damages or, in the alternative, statutory damages against Defendant for each falsification or removal of copyright management information pursuant to 17 U.S.C. § 1202;
- d. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- e. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505 and/or 17 U.S.C. § 1203(b)(4) and (5);
- f. for pre judgment interest as permitted by law; and
- g. for any other relief the Court deems just and proper.

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2 DATED: April 12, 2022

3 **SANDERS LAW GROUP**

4 By: /s/ Craig B. Sanders
5 Craig B. Sanders, Esq.
6 100 Garden City Plaza, Suite 500
7 Garden City, NY 11530
8 Tel: (516) 203-7600
9 Email: csanders@sanderslaw.group
10 File No.: 124484

11 *Attorneys for Plaintiff*
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